

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JAMES SCIANDRA and MARILYN
KSIAZEK, h/w

Plaintiffs,

v.

TRANSPORT GRAYSON, INC. and
FRANCOIS EW

Defendants.

:
: Case No.:
:
:
:
: Removed from the Court of Common Pleas of
: Luzerne County, PA, Case No.: 2020-6860
:
:
: **JURY TRIAL DEMANDED**
:
:

DEFENDANT, TRANSPORT GRAYSON, INC.'S
NOTICE OF REMOVAL

**TO: CLERK OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF PENNSYLVANIA**

Defendant, Transport Grayson, Inc., (“Grayson”) by and through its attorneys, Maron Marvel Bradley Anderson & Tardy, LLC, hereby gives notice of the removal of this civil action from the Court of Common Pleas of Luzerne County, Pennsylvania to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and in support thereof, avers the following:

1. Plaintiffs, James Sciandra and Marilyn Ksiazek, husband and wife, (“Mr. Sciandra” and “Ms. Ksiazek,” collectively “Plaintiffs”) commenced this action by filing a Complaint in the Court of Common Pleas of Luzerne County, Pennsylvania on August 5, 2020, docketed as Case No.: 2020-6860. (A true and correct copy of Plaintiffs’ Complaint is attached hereto as Exhibit “A”).

2. Plaintiffs’ Complaint alleges *inter alia* that, on or about August 29, 2018, Grayson’s commercial vehicle operated by Francois Ew suffered a catastrophic trailer tire failure

on northbound Interstate 81 in Luzerne County, PA, left debris in the roadway and caused a collision with and damage to Mr. Sciandra's vehicle and person. Further, the Complaint alleges that Ms. Ksiazek suffered a loss of her husband's services, companionship and consortium as a result of the above-referenced motor vehicle accident. (*See* Exhibit "A" at ¶¶ 6-9, 44-48).

3. The Complaint was served upon Grayson on August 27, 2020.

4. Upon information and belief, Grayson is the only Defendant that has been definitively served in this case. Grayson consents to this removal, and the consent of Defendant, Francois Ew, is not required. *See Lewis v. Rego Co.*, 757 F.2d 66, 68-69 (3d Cir. 1985) (finding an exception to the consent rules where a defendant has not been served at the time of removal); *Landman v. Borough of Bristol*, 896 F. Supp. 406, 409 (E.D. Pa. 1995) ("A co-defendant need not be joined when the co-defendant has not been served . . .").

I. DEFENDANT GRAYSON HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL.

5. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446 (b) because it is filed within thirty (30) days after Plaintiffs served Grayson on August 27, 2020.

6. This Court is the proper venue for this action because it is the "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

7. No previous application has been made for the relief requested herein.

8. Pursuant to 28 U.S.C. § 1446(d), Grayson will promptly provide written notice of this Notice of Removal to all adverse parties, and promptly after the filing of this Notice of Removal file a copy of the Notice of Removal with the Prothonotary of the Court of Common Pleas of Luzerne County, Pennsylvania. (See Proposed Notice of Filing of Notice of Removal Addressed to Luzerne County Court of Common Pleas Prothonotary, attached hereto as Exhibit "B").

II. THE COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. § 1332.

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because this is a civil action between citizens of a state and citizens or subjects of a foreign state and the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00).

A. Complete Diversity of Citizenship Exists Between Plaintiffs and Defendants

10. Removal is proper because there is complete diversity between the parties. 28 U.S.C. § 1332(a).

11. The Complaint states that Plaintiffs, James Sciandra and Marilyn Ksiazek, husband and wife, are adult individuals residing at 32 Hillcrest Drive, Dickson City, Pennsylvania. (*See* Exhibit “A” at ¶ 1). Therefore, upon information and belief, Plaintiffs are citizens of the Commonwealth of Pennsylvania.

12. The Complaint states that Grayson is a corporation with a principal place of business at 1193 Route 116, Danville, Quebec, JOA1OA, Canada. (*See* Exhibit “A” at ¶ 2). As the Complaint demonstrates, Grayson is a citizen of Canada, where it is incorporated and maintains its principal place of business.

13. The Complaint states that Defendant, Francois Ew, is an adult individual residing at 382 5E AV, Sherbrooke, Quebec, J1G2L7, Canada. As the Complaint demonstrates, Mr. Ew is a citizen of Canada.

14. At the time of the filing of the Complaint and this Notice of Removal, complete diversity of citizenship existed between Plaintiffs and Defendants. None of the Defendants are citizens of the forum state.

B. The Amount in Controversy Exceeds Seventy-Five Thousand Dollars (\$75,000).

15. In the Complaint, Plaintiffs assert claims of Negligence and Loss of Services and Consortium against Defendants. (*See* Exhibit “A” at ¶¶ 23-48).

16. Based upon the allegations in Plaintiffs’ Complaint, the amount in controversy in this action is in excess of seventy-five thousand dollars (\$75,000.00), exclusive of costs and interest, as Mr. Sciandra seeks in excess of fifty thousand dollars (\$50,000.00) for his personal injuries allegedly resulting from the August 29, 2018 motor vehicle accident and Ms. Ksiazek seeks in excess of fifty thousand dollars (\$50,000.00) for the loss of her husband’s services, companionship and consortium allegedly resulting from the August 29, 2018 motor vehicle accident. (*See* Exhibit “A” at ¶¶ 23-48).

III. CONCLUSION

17. As such, this Honorable Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. § 1332 based upon diversity of citizenship between the parties and the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00)

18. The subject lawsuit is accordingly removable from Pennsylvania state court to this Honorable Court pursuant to 28 U.S.C. § 1441 and 1446.

19. Grayson has attached true and correct copies of all process and pleadings filed in this action to date.

WHEREFORE, Defendant, Transport Grayson, Inc., hereby removes this action from the Court of Common Pleas of Luzerne County, Pennsylvania to the United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,

**MARON MARVEL BRADLEY
ANDERSON & TARDY LLC**

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Dated: September 14, 2020

CERTIFICATE OF SERVICE

I, Jared B. Shafer, Esquire, do hereby certify that on September 14, 2020, a true and correct copy of the foregoing Notice of Removal was filed with the Court via Electronic Filing System and served on counsel of record via First Class U.S. Mail and electronic mail.

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Dated: September 14, 2020